



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0309; FRL-9975-82-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonably Available Control Technology for Cement Kilns, Revisions to Portland Cement Manufacturing Plant and Natural Gas Compression Station Regulations, and Removal of Nitrogen Oxides Reduction and Trading Program Replaced by Other Programs and Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving state implementation plan (SIP) revisions submitted by the State of Maryland. The revisions pertain to reasonably available control technology (RACT) for cement kilns, revisions to and recodification of certain provisions for Portland cement manufacturing plants (cement plants) and internal combustion (IC) engines at natural gas compression stations, and removal of the obsolete Nitrogen Oxides (NO_x) Reduction and Trading Program that has been replaced by other trading programs or addressed in other regulations. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2016-0309. All documents in the docket are listed on the [http:// www.regulations.gov](http://www.regulations.gov)

website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814-2308, or by e-mail at powers.marilyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 13, 2017, (82 FR 52259), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. In the NPR, EPA proposed approval of revisions to Maryland regulations pertaining to RACT for cement kilns, revisions to and recodification of certain provisions for Portland cement plants and IC engines at natural gas compression stations, and removal of the obsolete NO_x Reduction and Trading Program that has been replaced by other trading programs or addressed in other regulations. The formal SIP revision (Maryland SIP # 15-04) was submitted on November 24, 2015 by the State of Maryland, through the Maryland Department of the Environment (MDE), for approval into the Maryland SIP.

The submission is comprised of three State actions pertaining to amendments to the Code of Maryland Regulations (COMAR) 26.11.01.10, COMAR 26.11.09.08, COMAR 26.11.29, and COMAR 26.11.30. The amendments address the requirement for NO_x RACT for cement kilns

for the 2008 ozone national ambient air quality standards (NAAQS), the removal of COMAR provisions related to the obsolete NO_x Budget Trading Program under the NO_x SIP Call¹ (that has been replaced by other trading programs), the consolidation of all existing and new requirements for cement kilns into one COMAR regulation, the consolidation of all existing and new requirements for IC engines into one COMAR regulation, the addition of new particulate matter (PM) monitoring requirements, and the addition of an alternate monitoring option for visible emissions at cement kilns. On February 17, 2017, MDE provided a letter to EPA clarifying the NO_x RACT limits and withdrawing from EPA's consideration a provision of its regulation for natural gas compression stations.

As explained in the NPR, three areas or portions of areas in Maryland were designated as nonattainment under the 2008 ozone NAAQS (77 FR 30088, May 21, 2012). Under section 182 of the CAA, states must review and revise the RACT requirements in their SIP to ensure that these requirements would still be considered RACT under the new, more stringent NAAQS. Major stationary sources² of ozone precursor emissions located in ozone nonattainment areas classified as moderate and above (and sources located in the Ozone Transport Region (OTR), of which the entire state of Maryland is a part) are subject to RACT requirements. *See* sections 182(b)(2) and 184(b)(2) of the CAA. Section 182(f) of the CAA specifically requires RACT for major stationary sources of NO_x. The cement kilns in Maryland are major stationary sources of NO_x and are therefore required to be evaluated for NO_x RACT under the 2008 ozone NAAQS.

¹ *See* Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone, [63 FR 57371](#) (October 27, 1998).

² A major stationary source of NO_x in a marginal or moderate ozone nonattainment area, or in an ozone transport region, is a source that emits or has the potential to emit 100 tons of NO_x.

The NO_x Budget Trading Program was established under the NO_x SIP Call to allow electric generating units (EGUs) greater than 25 megawatts and industrial non-electric generating units (or non-EGUs) with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr) (referred to as large non-EGUs) to participate in a regional NO_x cap and trade program. The NO_x SIP call also established NO_x reduction requirements for other non-EGUs that were not a part of the NO_x Budget Trading Program, including cement kilns and stationary IC engines. Maryland regulations COMAR 26.11.29 – NO_x Reduction Requirements and Trading Program and COMAR 26.11.30 - Policies and Procedures Relating to Maryland’s NO_x Reduction and Trading Program, were previously approved into the Maryland SIP to implement the NO_x Budget Trading Program and allowed EGUs and large non-EGUs in the state to participate in the regional NO_x cap and trade program established under EPA’s NO_x SIP Call. COMAR 26.11.29 also included NO_x reductions, monitoring, and recordkeeping requirements for cement kilns and IC engines.

EPA discontinued administration of the NO_x Budget Trading Program in 2009 upon the start of the Clean Air Interstate Rule (CAIR) trading programs.³ The NO_x SIP Call requirements continued to apply, and EGUs that were previously trading under the NO_x Budget Trading Program continued to meet NO_x SIP Call requirements under the more stringent requirements of the CAIR ozone season trading program. Large non-EGUs were not addressed in CAIR. Therefore, states needed to assess their state requirements and take regulatory action as necessary to ensure that all their non-EGU obligations continued to be met. After EPA discontinued the NO_x Budget Trading Program, Maryland’s EGU obligations under the NO_x SIP Call continued to

³ CAIR was subsequently vacated and remanded. *See North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), modified by 550 F.3d 1176 (remanding CAIR). CAIR was replaced with the Cross-State Air Pollution Rule (CSAPR) (76 FR 48208, August 8, 2011), which, after legal challenges, was implemented starting in January 2015.

be addressed in Maryland regulation COMAR 26.11.28 – *Clean Air Interstate Rule* and later in CSAPR. Maryland’s large non-EGU reduction requirements are largely addressed in separate rulemaking actions under other COMAR regulations and discussed in more detail in the NPR for this rulemaking.

II. Summary of SIP Revision and EPA Analysis

Revised COMAR 26.11.30 establishes a limit of 3.4 pounds (lbs) of NO_x per ton of clinker (lbs NO_x/ton of clinker) for long, dry kilns, and 2.4 lbs NO_x/ton of clinker for pre-calciner kilns.

Maryland’s November 13, 2015 submittal explained that NO_x RACT for cement kilns, which are major stationary sources of NO_x subject to RACT requirements, was established consistent with the Ozone Transport Commission (OTC) recommended RACT requirements for the 2008 ozone NAAQS. The 2007 *OTC Technical Support Document on Identification and Evaluation of Candidate Control Measures*⁴ (OTC TSD) recommended NO_x emission rates for cement kilns based on applying a 60 percent reduction to uncontrolled emissions. Maryland’s February 17, 2017 supplemental submission provided additional clarification on the justification for the NO_x RACT limits for the cement kilns. MDE also provided an estimate of costs to comply with the revised NO_x rates for cement kilns, including the costs to install selective non-catalytic reduction (SNCR) controls to meet the more stringent NO_x rate limits established by its May 21, 2010 regulatory action and the additional costs to increase the amount of reagent used in the SNCR to meet the requirements in its July 10, 2015 action further lowering the NO_x emission rate.

EPA agrees with Maryland’s determination of NO_x RACT for cement kilns for the 2008 ozone

⁴ See Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone, 63 FR 57371 (October 27, 1998).

NAAQS, based on our analysis of the cost effectiveness associated with installation of SNCR, the cost effectiveness for additional operating costs for the increase in ammonia use, as well as the technological considerations involved with further increasing the amount of ammonia used.

The November 24, 2015 SIP revision submittal also included several state regulatory actions for inclusion into the Maryland SIP. On May 21, 2010, Maryland repealed COMAR 26.11.29 and COMAR 26.11.30, with a State effective date of May 31, 2010. The requirements for certain large non-electric generating units (EGUs), cement kilns, and IC engines pursuant to the NO_x SIP Call continue to apply, as explained in the NPR and noted previously. Therefore, Maryland recodified certain portions of the Portland cement plant and natural gas compression station provisions (formerly found at COMAR 26.11.29.15) into new COMAR 26.11.29 (with a State effective date of July 20, 2015), retitled NO_x Reduction Requirements for Non-Electric Generating Units. The cement kiln provisions necessary to address the NO_x SIP Call requirements were revised to add a compliance date of April 1, 2017 for the existing NO_x emission rate limits in the regulation and to remove an alternative control method.

COMAR 26.11.30 formerly included large non-EGUs as participants in the NO_x Reduction and Trading Program and established an ozone season allocation of 947 tons of NO_x for the large non-EGUs at the only kraft pulp mill located in Maryland. With repeal of the NO_x Reduction and Trading Program, Maryland modified its kraft pulp mill regulation in COMAR 26.11.14.07 to limit NO_x emissions from fuel burning equipment at kraft pulp mills to 947 tons per year (matching the ozone season allocation formerly in COMAR 26.11.30). Maryland is currently in the process of developing regulations for inclusion in the SIP amending the State's provisions for kraft pulp mills for addressing NO_x SIP Call obligations and also addressing the State's ongoing

NOx SIP Call obligations with respect to other large non-EGUs.

Other specific requirements of the revised Maryland COMAR regulations and the rationale for EPA's proposed action are explained in the NPR and the technical support document (TSD) for the NPR (available in the docket for this rulemaking at www.regulations.gov) and will not be restated here.

III. Public Comments and EPA's Response

EPA received two public comments on our November 13, 2017 action proposing to approve Maryland's SIP submittal of November 24, 2015, as supplemented on February 17, 2017.

Comment 1 - The commenter provided statements relating to greenhouse gases and climate change.

EPA Response to comment 1 - This comment is not relevant to this rulemaking action. This action pertains to RACT for cement kilns, recodification of provisions for Portland cement plants and IC engines at natural gas compression stations, and removal of obsolete trading programs that have been replaced or addressed in other regulations.

Comment 2 – The commenter expressed concern over unnecessary and burdensome regulations, the regulatory process, and the associated costs of regulations, particularly those issued by EPA.

EPA Response to comment 2- As the comment is neither supportive of, critical of, nor specific to this action, no response is provided. This action pertains to RACT for cement kilns, recodification of provisions for Portland cement plants and IC engines at natural gas compression stations, and removal of obsolete trading programs that have been replaced or

addressed in other regulations.

IV. Final Action

EPA has reviewed the Maryland SIP revision submittal of November 24, 2015, as supplemented on February 17, 2017, seeking approval of revisions to Maryland regulations that establish RACT for cement kilns for the 2008 ozone NAAQS in accordance with requirements in CAA sections 172, 182 and 184, recodifies provisions for Portland cement plants and IC engines at natural gas compression stations, and removes the NO_x Budget Trading Program that has been replaced by other trading programs or addressed in other regulations. EPA is approving the submittal as a revision to the Maryland SIP in accordance with CAA section 110.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the revisions to Maryland regulations COMAR 26.11.01.10, COMAR 26.11.09.08, COMAR 26.11.29, and COMAR 26.11.30 as discussed in section I of this final action. EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the

next update to the SIP compilation.⁵

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

⁵ 62 FR 27968 (May 22, 1997).

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S.

House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving Maryland RACT for cement kilns, removal of Maryland regulations for obsolete trading programs, and recodification of provisions related to cement plants and IC engines at natural gas compression stations may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 6, 2018.

Cosmo Servidio,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart V--Maryland

2. In §52.1070, the table in paragraph (c) is amended by:

- a. Revising under subheading “26.11.01 General Administrative Provisions” the entry “26.11.01.10”.
- b. Revising under subheading “26.11.09 Control of Fuel Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations” the entry “26.11.09.08”.
- c. Removing the subheading “26.11.29 NO_x Reduction and Trading Program” and the entries “26.11.29.01” through “26.11.29.15”.
- d. Adding the subheading “26.11.29 Control of NO_x Emissions from Natural Gas Pipeline Stations” and the entries “26.11.29.01” through “26.11.29.04”.
- e. Removing the subheading “26.11.30 Policies and Procedures Relating to Maryland’s NO_x Reduction and Trading Program” and the entries “26.11.30.01” through “26.11.30.09”.
- f. Adding the subheading “26.11.30 Control of Portland Cement Manufacturing Plants” and the entries “26.11.30.01” through “26.11.30.08”.

The additions and revision read as follows:

§52.1070 Identification of plan.

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(c) * * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

| Code of Maryland Administrative Regulations (COMAR) citation | Title/subject | State effective date | EPA approval date | Additional explanation/citation at 40 CFR 52.1100 |
|---|--|-----------------------------|--|--|
| 26.11.01 General Administrative Provisions | | | | |
| * * * * | | | | |
| 26.11.01.10 | Continuous Opacity Monitoring. | 7/20/2015 | [insert date of publication in the Federal Register], [insert Federal Register citation] | 1. (c)(106) Requirement to use TM 90-01 is removed. Exceptions: A(4), B(4), D(2)(c), and F. 2. Add new subsection (A)(5). 3. Add new subsection F. |
| * * * * | | | | |
| 26.11.09 Control of Fuel Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations | | | | |
| * * * * | | | | |
| 26.11.09.08 | Control of NO _x Emissions for Major Stationary Sources. | 7/20/2015 | [insert date of publication in the Federal Register], | 1. Revise H, H(1) and H(3), remove H(2), and recodify H(4) to H(3). 2. Revise I and |

| Code of Maryland Administrative Regulations (COMAR) citation | Title/subject | State effective date | EPA approval date | Additional explanation/citation at 40 CFR 52.1100 |
|---|---|-----------------------------|---|--|
| | | | [insert Federal Register citation] | remove I(3) and I(4). Previous approval (81 FR 59488) |
| * * * * * | | | | |
| 26.11.29 Control of NOx Emissions from Natural Gas Pipeline Stations | | | | |
| 26.11.29.01 | Definitions. | 7/20/2015 | [insert date of publication in the Federal Register], [insert Federal Register citation] | |
| 26.11.29.02 | Applicability and General Requirements. | 7/20/2015 | [insert date of publication in the Federal Register], [insert Federal Register citation] | |
| 26.11.29.03 | Monitoring Requirements. | 7/20/2015 | [insert date of publication] | |

| Code of Maryland Administrative Regulations (COMAR) citation | Title/subject | State effective date | EPA approval date | Additional explanation/citation at 40 CFR 52.1100 |
|---|---------------------------|-----------------------------|---|--|
| | | | in the Federal Register], [insert Federal Register citation] | |
| 26.11.29.04 | Demonstrating Compliance. | 7/20/2015 | [insert date of publication in the Federal Register], [insert Federal Register citation] | |
| 26.11.30 Control of Portland Cement Manufacturing Plants | | | | |
| 26.11.30.01 | Scope. | 7/20/2015 | [insert date of publication in the Federal Register], [insert Federal Register citation] | |
| 26.11.30.02 | Applicability. | 7/20/2015 | [insert date of publication in the Federal | |

| Code of Maryland Administrative Regulations (COMAR) citation | Title/subject | State effective date | EPA approval date | Additional explanation/citation at 40 CFR 52.1100 |
|---|------------------------------|-----------------------------|---|--|
| | | | Register], [insert Federal Register citation] | |
| 26.11.30.03 | Definitions. | 7/20/2015 | [insert date of publication in the Federal Register], [insert Federal Register citation] | |
| 26.11.30.04 | Particulate Matter. | 7/20/2015 | [insert date of publication in the Federal Register], [insert Federal Register citation] | |
| 26.11.30.05 | Visible Emissions Standards. | 7/20/2015 | [insert date of publication in the Federal Register], [insert Federal | |

| Code of Maryland Administrative Regulations (COMAR) citation | Title/subject | State effective date | EPA approval date | Additional explanation/citation at 40 CFR 52.1100 |
|---|---|-----------------------------|--|--|
| | | | Register citation] | |
| 26.11.30.06 | Sulfur Compounds. | 7/20/2015 | [insert date of publication in the Federal Register], [insert Federal Register citation] | |
| 26.11.30.07 | Nitrogen Oxides (NO _x). | 7/20/2015 | [insert date of publication in the Federal Register], [insert Federal Register citation] | |
| 26.11.30.08 | NO _x Continuous Emissions Monitoring Requirements. | 7/20/2015 | [insert date of publication in the Federal Register], [insert Federal Register citation] | |

| Code of Maryland Administrative Regulations (COMAR) citation | Title/subject | State effective date | EPA approval date | Additional explanation/cit ation at 40 CFR 52.1100 |
|---|----------------------|-------------------------------------|----------------------------------|---|
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[FR Doc. 2018-06129 Filed: 3/27/2018 8:45 am; Publication Date: 3/28/2018]